IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2180 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

STATE OF GUJARAT

Versus

BABUBHAI NARSINHBHAI VASAVA

Appearance:

1. Special Civil Application No. 2180 of 2001

MR DIGANT P JOSHI AGP for Petitioner No. 1

MR GIRISH M DAS for Respondent No. 1

MR SUNIL C PATEL for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 13/12/2001

ORAL JUDGEMENT

1. By this petition under Articles 226 and 227 of the Constitution, the petitioner has challenged the award

of the Labour Court, Surat in Reference (LCS) No.242 of 1986 whereby the respondent No.1 workman is ordered to be reinstated with full backwages.

2. The award is challenged mainly on the ground of being perverse. Going through the impugned award, it clearly appears that the learned Judge of the Labour Court has first adverted to the proceedings before the Conciliation Officer which were held before the making of the Reference. As against the case and the statement of claim of the workman himself stating that he was discharged from service by an oral order on 21.7.1985, the conciliation proceedings are discussed at the outset to give an impression that the petitioner had already taken the workman back on duty with effect from 1.4.1986 and even assured payment of wages for a period of 40 days. According to the case of the petitioner, the workman was employed as a daily-wager watchman on a particular scheme on nominal muster from 20.7.1973 to 1.7.1981. The charge of the scheme on which the workman was employed was given away to another officer with effect from 7.7.1981. It was proved before the Labour Court on the basis of documentary evidence produced by the workman that he was employed from 20.3.1973 to 6.7.1981. Subsequent to that, however, the evidence is to the effect that the workman had worked for only 33 days in the year 1982, for 148 days in the year 1983, for 84 days in the year 1984 and 52 days in the year 1985. Even after production of the muster roll, the employment of the workman is found to be restricted to the period from 21.2.1983 to 19.4.1983 from 21.9.1983 to 21.10.1983, from 21.1.1984 to 20.2.1984, from 21.5.1985 to 20.6.1985 and lastly from 30.1.1986 to 20.3.1986. Despite the clear evidence as above, the Labour Court has in the penultimate para of the award drawn the conclusion that the workman had served from 20.3.1973 to 21.7.1985 and on that basis held that the act of relieving him was illegal and unfair and against the principles of natural justice. The inference of illegality or violation of the principles of natural justice has no foundation in facts and, only on the ground that the employer to whom the section or work was subsequently entrusted had not produced his defence, the order to reinstate the workman with full backwages is made.

3. The above discussion of evidence and the findings and conclusions recorded by the Labour Court leave no room for doubt that the impugned award is perverse and made against the overwhelming weight of documentary evidence and hence requires interference of this Court. The only argument addressed on behalf of the workman was

that there was no apparent error on the face of the impugned award and that this Court may not interfere with it in exercise of the extraordinary writ jurisdiction.

4. In the above facts and circumstances, however, the award has resulted into miscarriage of justice and being patently perverse and illegal, it has to be set aside. Accordingly, the petition is allowed. The impugned award and order is set aside. Rule is made absolute accordingly with no order as to costs.

Sd/-

13.12.2001 (D.H.Waghela, J.)

(KMG Thilake)